

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

May 9, 2011

The Honorable Steven Chu
Secretary
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585

The Honorable Jon Wellinghoff
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Dear Secretary Chu and Chairman Wellinghoff:

Pursuant to Rule X and XI of the Rules of the U.S. House of Representatives, the Committee on Energy and Commerce seeks information relating to recent and pending new rules promulgated by the Environmental Protection Agency (EPA) that impact the electric power sector. We seek information regarding the extent to which, if any, EPA has consulted or coordinated with the U.S. Department of Energy or the Federal Energy Regulatory Commission in the development and planning for implementing these regulations.

Accordingly, please find attached to this letter questions and document requests as well as instructions relating to the requests for documents. Please provide the written responses and documents requested by no later than three weeks from the date of this letter. Thank you for your prompt attention to this request. Should you have any questions, please contact Mary Neumayr of the Majority Committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



Ed Whitfield
Chairman
Subcommittee on Energy and Power


Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

cc: The Honorable Philip D. Moeller
Commissioner, Federal Energy Regulatory Commission

The Honorable Marc Spitzer
Commissioner, Federal Energy Regulatory Commission

The Honorable John R. Norris
Commissioner, Federal Energy Regulatory Commission

The Honorable Cheryl A. LaFleur
Commissioner, Federal Energy Regulatory Commission

The Honorable Henry A. Waxman, Ranking Member

The Honorable Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

Attachments

INFORMATION & DOCUMENT REQUESTS

Electric Power Sector

1. EPA has adopted and is planning to adopt a series of regulations affecting the electric utility industry. These rules include the proposed Transport Rule announced in July 2010 and planned additional transport rules to address revised air quality standards; the proposed utility national emissions standards for hazardous air pollutants and new standards of performance announced in March 2011; GHG regulations including GHG New Source Performance Standards for power plants which EPA plans to propose in July 2011; the proposed coal ash rule announced in June 2010; National Ambient Air Quality Standards (NAAQS) for ozone, particulate matter, sulfur dioxide (SO₂), and nitrogen dioxide (NO₂); and the cooling water intake structures rule announced in March 2011 under Section 316 of the Clean Water Act.
 - a. Has EPA shared with DOE or the Commission any analysis detailing the cumulative impacts these regulations will have on the electricity sector? If yes, provide a copy of all such analyses.
 - b. Has EPA requested from DOE or the Commission any analysis detailing the cumulative impacts these regulations will have on the electricity sector? If yes, provide a copy of the request and any resulting analysis.
2. Since January 2009, has EPA consulted with or requested information from DOE or the Commission regarding the potential impacts of its GHG or other power sector rules referenced above on electric reliability? If yes:
 - a. Describe each consultation, including where it occurred, the date on which it occurred, and identify any other participating agencies.
 - b. Describe in detail the outcome of those consultations.
 - c. Provide all documents relating to those consultations.
3. Since January 2009, has DOE or the Commission participated in any interagency task forces or other working groups to address issues related to the impacts of EPA's power sector rules on electric reliability? If so, provide a detailed response including but not limited to:
 - a. The members of the interagency task force(s) or working group(s);
 - b. When the interagency task force(s) or working group(s) were formed;
 - c. The statutory authority the task force(s) or working group(s) under which they have been formed;

- d. The dates on which the task forces or working group(s) have met to address issues related to the impacts of EPA's power sector rules on electric reliability; and
 - e. Provide any minutes, communications or other documentation relating to the work of the task force(s) or working group(s).
4. To what extent does DOE or the Commission have the authority, emergency or otherwise, to waive environmental regulations if they threaten reliability? To the extent such authority exists, describe the decisionmaking process by which DOE or the Commission would invoke that authority, and how DOE or the Commission would coordinate with other agencies?
 5. In the past, has DOE or the Commission exercised authority, emergency or otherwise, to waive environmental regulations to ensure reliability of the bulk power system? If yes, please identify each such instance, including the dates, facilities involved and the nature of the action taken by DOE or the Commission.
 6. EPA's aforementioned regulations are expected to result in the reduction or retirement of a significant portion of fossil fuel-fired generation. If such capacity losses threaten the reliability of the bulk power system, what authority does DOE or the Commission have to require utilities or electricity generators to continue to operate to ensure reliability? What steps must DOE or the Commission take to implement any such authority and how long would such process take?
 7. To what extent has DOE or the Commission exercised its authority to direct utilities or electricity generators to continue to operate to ensure reliability? In such instances:
 - a. Were the utility or electricity generators protected from penalties for violations of environmental regulations or were they subject to penalties?
 - b. Were the utility or electricity generators protected from civil or criminal enforcement actions by federal or state regulators or were they subject to enforcement actions?
 - c. Were the utility or electricity generators protected from citizen suits or actions by third parties or were they subject to suits or third party actions?
 8. If DOE or FERC exercise its authority in the future to direct utilities or electricity generators to continue to operate to ensure reliability of electricity supply:
 - a. Will the utility or electricity generators be protected from penalties for violations of the environmental regulations or will they potentially be subject to penalties?
 - b. Will the utility or electricity generators be protected from civil or criminal enforcement actions by federal or state regulators or will they potentially be subject to enforcement actions?

- c. Will the utility or electricity generators be protected from citizen suits or actions by third parties or will they potentially be subject to suits or third party actions?

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions when possible. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

12. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

13. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

14. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.

15. In the event that a responsive document is withheld on any basis, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document.

16. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

17. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the

Committee, identified in a privilege log provided to the Committee, as described in (15) above, or identified as provided in (10) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.
3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.
4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" means and refers to you as a natural person and the Department of Energy ("DOE") or the Federal Energy Regulatory Commission (the "FERC" or "Commission") and any of the offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the DOE or FERC; and includes any other person(s) defined in the document request letter.

8. The term "DOE" refers to the U.S. Department of Energy and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the DOE.

9. The term "FERC" or "Commission" refers to the Federal Energy Regulatory Commission and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the FERC.